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IN THE

Supreme Court of the United States

October Term, 1971

No. 71-1019

TEXTILE WORKERS UNION OF AMERICA, AFL-CIO,
Petitioner,

v.

MOORE OF BEDFORD, INC., and
NATIONAL LABOR RELATIONS BOARD,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

BRIEF ON BEHALF OF THE WORKERS DEFENSE LEAGUE, *AMICUS CURIAE*

Interest of the Workers Defense League

This brief *amicus curiae* is filed by the Workers Defense League with the consent of the parties, as provided for in Rule 42 of the Rules of this Court.

The Workers Defense League (hereinafter "WDL") has for 35 years been concerned with the rights of those

members of American society most vulnerable to oppression. Its concern has resulted in extensive work in the areas of racial injustice, sharecroppers' and farm workers' rights, military security abuses, conscientious objectors' rights, forced labor and immigration and naturalization problems. It has come before this Court as *amicus curiae* in numerous human rights cases, including *NAACP* v. *Alabama*, 357 U.S. 449 (1958), *Morgan* v. *Virginia*, 328 U.S. 373 (1946), *Smith* v. *Allwright*, 321 U.S. 649 (1944), and *Walker* v. *Youell*, 316 U.S. 712 (1942).

Its central business, however, has always been workers' rights. This concern began at the time of WDL's role in the CIO's fight to exist in Mayor Hague's Jersey City. It grew through WDL's creation in 1964, together with the A. Phillip Randolph Foundation, of the Joint Apprenticeship Program, bringing minority youth into the skilled trades, which has grown from a shoestring to a 21-city operation, and which has placed 3,000 young men into various trades. It continues today in the WDL's work to create the Professional Household Workers Union, a new organization striving to bring the benefits of unionization to domestic workers. Labor cases in which WDL has come before this Court as *amicus curiae* include *Staub* v. *Baxley*, 355 U.S. 313 (1958), *United States* v. *United Mine Workers*, 330 U.S. 258 (1947), *Hill* v. *Florida*, 325 U.S. 538 (1945), *Alabama State Federation of Labor* v. *McAdory*, 325 U.S. 450 (1945), and *Apex Hosiery* v. *Leader*, 310 U.S. 469 (1940).

Time has seen some changes in the categories of persons most liable to abuse, and thus most in need of WDL

help, but one truth which persists is that the poor—wherever and of whatever color—are deprived of the rights of Americans.

Within the universe of industrial workers, pieceworkers are the poorest of the poor. Most American piecework, today as yesterday, is performed in the historically sweated industries—textiles and the needle trades—where the piecework system operates as the most effective of all speed-up devices. Of all industrial workers, pieceworkers are perhaps the most in need of union representation and of collective bargaining. This case arises because of the exploitation of pieceworkers, of the poor, and for that reason the WDL is concerned by it.

We are concerned for another reason. The great promise of the National Labor Relations Act was that for the first time the federal government would guarantee to workers "the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing . . . ." National Labor Relations Act, Section 7; 29 USC §157.

The promise has been held out to American workers for 35 years now, but the attainment of the right has not been realized. Indeed, each year the National Labor Relations Board reports an *increase* in the number of cases of employers violating the most essential elements of the right to organize: firing employees because they try to organize unions, threatening to close their plants if the workers organize unions, and refusing to bargain once the employees have organized unions. These violations will continue and will increase until such time as the rights promised in

the National Labor Relations Act cease to be naked promises and are genuinely guaranteed by the government and the courts.

One tool which should secure at least minimum enforcement of the Act is the doctrine of *Universal Camera* and *Walton Manufacturing* [*Universal Camera Corporation* v. *NLRB*, 340 U.S. 474 (1951); *NLRB* v. *Walton Manufacturing Company*, 369 U.S. 404 (1962)]: *i.e.*, the doctrine that the decision of the National Labor Relations Board, if supported by substantial evidence, shall not be washed out by a court of appeals which seeks to substitute its own ideology for the provisions of the National Labor Relations Act. Of course the workload of this Court does not permit it daily to police *Universal Camera-Walton*. Tragically, the lack of policing permits a situation in which, in fiscal 1970 (the last year for which such figures are available), the courts of appeals affirmed the Board's decisions in only 68% of the cases on review. *Thirty-Fifth Annual Report of the National Labor Relations Board for the Fiscal Year Ended June 30, 1970*, Table 19A, page 195.

The Workers Defense League believes that the 68% figure is so low as to be cause for concern that the courts of appeals are seeking to rewrite the National Labor Relations Act. However, when we consider the experience of Textile Workers Union of America, AFL-CIO, in the Fourth Circuit (which experience, we are informed and believe, is that in the last two years the Fourth Circuit has denied enforcement in three out of the four TWUA cases before it in which the NLRB has found that employers had denied workers' rights under the NLRA) and spe-

cifically when we consider the instant case, we are more than concerned: what is happening here is the gutting of the NLRA.

Argument

The Workers Defense League urges the United States Supreme Court to grant certiorari for two reasons.

First, the NLRB has in this case demonstrated that the Employer has refused to bargain with the Union regarding the earnings of its pieceworker employees. The Board has directed the Employer that it must bargain. The Fourth Circuit, however, has invented a theory to justify the Employer in refusing to bargain regarding piecework earnings. This theory will work equally well for any piecework employer. It will eliminate collective bargaining regarding the earnings of pieceworkers. Once again, the group injured will be the group which is poorest and least able to defend itself. This is inherently a bad decision, which will impair the ability of a large group of low-wage and exploited workers to protect themselves, and which will do so by denying them their NLRA right to bargain.

Second, we urge the grant of certiorari because the decision below is not only inherently bad, but is also symptomatic of the current trend of a number of courts of appeals to rewrite and weaken the National Labor Relations Act, thereby betraying the promise which the United States extends in the NLRA, that the rights to organize and bargain will be protected by the government. The creation of a special loophole for piecework employers in the instant case, like the creation of a special loophole for 8(a)(3)

employers, struck down by this Court in *Walton Manufacturing Company, supra*, calls (we respectfully submit) for a review by this Court of what is happening to the National Labor Relations Act in the courts of appeals, and for guidance by this Court as to what should be happening.

Conclusion

For the foregoing reasons, the Petition of the Textile Workers Union of America for a Writ of Certiorari should be granted.

Respectfully submitted,

ROWLAND WATTS
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Dated: New York, N.Y.
February, 1972